

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

Brion Scott McKenna,

Registrant.

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) **CFTC Docket No: SD** 05-03
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**OPINION AND ORDER ACCEPTING THE OFFER OF SETTLEMENT
OF BRION SCOTT McKENNA**

On this date, the Commission filed a Notice of Intent to Suspend, Revoke, or Restrict Registration ("Notice") against Registrant Brion Scott McKenna ("McKenna").¹ McKenna has submitted an Offer of Settlement ("Offer"). Upon consideration, the Commission has determined to accept the Offer.² Solely on the basis of the consent evidenced by the Offer, and without adjudication on the merits, the Commission finds that the facts set forth in the Notice constitute cause for a statutory disqualification of McKenna under Sections 8a(3)(D) and 8a(4) of the Act.

¹ The Notice alleges that McKenna's registration as an associated person is subject to revocation, suspension or restriction under Sections 8a(3)(D) and 8a(4) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 12a(3)(D) and 12a(4) (2002), because McKenna pleaded guilty on May 20, 2005 to the felony crime of manipulation in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), in the U.S. District Court for the Northern District of California.

² In his Offer, without admitting or denying the allegations of the Notice, McKenna acknowledges service of the Notice; admits to the jurisdiction of the Commission with respect to the matters set forth in the Notice; waives a hearing, all post-hearing procedures, judicial review by any court, and any objection to the staff's participation in the Commission's consideration of the Offer; and stipulates that the record basis on which this Opinion and Order ("Order") is entered consists of the Notice and the findings to which McKenna consented in the Offer, which are incorporated in this Order. In addition, McKenna waives any claim of double jeopardy based on the institution of this proceeding or the entry in this proceeding of any order for relief, and further waives all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2004).

As noted above in footnote 1, McKenna has pleaded guilty to the felony crime of manipulation in violation of Section 9(a)(2) of the Act. Section 9(b) of the Act states:

Any person convicted of a felony under this section [9(a)] shall be suspended from registration under this act and shall be denied registration or reregistration for five years or such longer period as the Commission may determine, and barred from using, or participating in any manner in, any market regulated by the Commission for five years or such longer period as the Commission shall determine, on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest.

Section 9(b) does not become applicable to McKenna unless and until he is convicted of a Section 9 felony. Upon conviction, the Act requires that the Commission deny McKenna registration or reregistration, as well as market access, for a period of five years or longer, unless the Commission determines that such denial and market bar are not required to protect the public interest. In view of Section 9(b)'s requirements, the Commission hereby undertakes, upon McKenna's conviction, to enter a finding that the three year registration ban imposed by this Order is sufficient to protect the public interest, and that the five year or longer registration ban and the bar from using or participating in any market regulated by the Commission are not required to protect the public interest, provided that, at the date of conviction of a Section 9 felony:

(1) McKenna has not engaged in any activity, other than the plea and conviction referred to herein, that would provide the basis, pursuant to Sections 8a(2) or (3) of the Act, for refusing to register him, and

(2) DOJ represents in writing to the Commission that McKenna has fully cooperated with DOJ and that McKenna is in full compliance with the terms of his plea agreement.³

Accordingly, the Commission HEREBY ORDERS the following:

³ Upon McKenna's conviction, absent the satisfaction of the two conditions identified above, Section 9(b) requires the Commission to consider the appropriate period for denying registration and barring market activity.

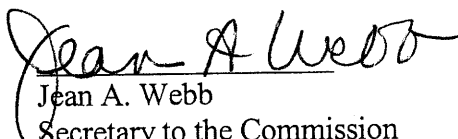
1. McKenna's registration as an associated person is revoked;
2. The Commission shall refuse to allow McKenna to register in any capacity for three years commencing from the date of the Order. However, after such three years should McKenna attempt to register in any capacity, this Order and McKenna's guilty plea shall not constitute the sole bases for the Commission to refuse McKenna's registration; and
3. McKenna shall comply with the undertakings set forth in his Offer as follows:
 - a. for three years commencing from the date of the Order McKenna shall not:
 - i. apply for registration;
 - ii. act as a principal ;
 - iii. seek exemption from registration with the Commission in any capacity, unless such exemption is pursuant to Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9) (2004); and
 - iv. engage in activity requiring registration or exemption from registration with the Commission except as provided for in Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9) (2004);
 - b. McKenna agrees not to take any action or make any public statements denying, directly or indirectly, any findings or conclusions in the Order, or creating or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects McKenna's: 1) testimonial obligations; or 2) right to take legal positions in other proceedings to which the Commission is not a party;
 - c. McKenna agrees to cooperate fully with the Commission, its staff and all federal law enforcement authorities in this proceeding and in any related inquiry, investigation or legal proceeding by, among other things: 1) responding promptly, completely, and truthfully to any inquiries or requests for information; 2) authenticating documents; 3) testifying completely and truthfully; and 4) not asserting privileges under the Fifth Amendment of the United States Constitution; and

- d. McKenna will undertake all steps necessary to assure compliance with this agreement.

A copy of this Order shall be served upon McKenna at the address set forth in the Notice, on all contract markets, and on the National Futures Association.

By the Commission.

Dated: May 20, 2005

A handwritten signature in cursive script, reading "Jean A. Webb".

Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission

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COMMODITY FUTURES TRADING COMMISSION

In the Matter of

BRION SCOTT McKENNA ,

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OFFICE OF PROCEEDINGS
PROCEDINGS CLERK

NOTICE OF INTENT TO REVOKE, SUSPEND OR RESTRICT REGISTRATION
PURSUANT TO SECTIONS 8a(3)(D) and 8a(4) OF THE COMMODITY EXCHANGE ACT

I.

The Commodity Futures Trading Commission ("Commission") has received information from its staff which tends to show, and the Commission's Division of Enforcement alleges and is prepared to prove that:

1. Brion Scott McKenna ("McKenna") resides in Houston, Texas.
2. Since at least March 17, 2004, McKenna has been registered with the Commission as an associated person.
4. Between August 2000 and October 2002 ("relevant period"), McKenna was employed by Williams Energy Market and Trading ("Williams"), a subsidiary of The Williams Companies.
5. During the relevant period, McKenna was not registered with the Commission in any capacity.

6. McKenna has pleaded guilty to the felony crime of manipulation in violation of Section 9(a)(2) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13(a)(2), for acts occurring during the relevant period while employed at Williams.

7. The facts set forth in Paragraph 6 constitute a basis for statutory disqualification from registration under Sections 8a(3)(D) and 8a(4) of the Act 7 U.S.C. §§ 12a(3)(D) and 12a(4) (2002), pursuant to which McKenna's registration as an associated person may be suspended, conditioned or revoked.

II.

Pursuant to Section 3.60(a), 17 C.F.R. § 3.60(a) (2004), McKenna is hereby notified that a public proceeding shall be conducted in accordance with the provisions of Commission Regulation 3.60, 17 C.F.R. § 3.60 (2004), on the following questions:

1. Whether McKenna is subject to statutory disqualification under Sections 8a(3)(D) and 8a(4) of the Act, as set forth in Section I, above; and

2. If the answer to question 1 is affirmative, whether the registration of McKenna should be suspended, restricted or revoked. Such proceeding shall be held before an Administrative Law Judge, in accordance with Commission Regulation 3.60, and all post-hearing procedures shall be conducted pursuant to Commission Regulation 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j) (2004).

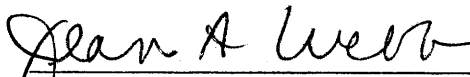
In accordance with the provisions of Commission Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3) (2004), McKenna is entitled to file a response challenging the evidentiary bases of the statutory disqualification or show cause why, notwithstanding the accuracy of the allegations, his registration should not be suspended, revoked, or restricted. Such response must be filed

with the Hearing Clerk, Office of Hearings and Appeals, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and served upon Elizabeth C. Brennan, Senior Trial Attorney, Division of Enforcement at 140 Broadway, 19th floor, New York, New York 10005, within thirty (30) days after the date of service of this Notice upon McKenna in accordance with the provisions of Commission Regulation 3.60(b). If McKenna fails to timely file a response to this notice, the allegations set forth herein shall be deemed to be true and the presiding officer may issue an Order of Default in accordance with the provisions of Commission Regulation 3.60(g), 17 C.F.R. § 3.60(g) (2004).

III.

The Hearing Clerk shall serve this Notice of Intent to Suspend, Revoke, or Restrict Registration by registered or certified mail pursuant to Commission Regulation 3.50, 17 C.F.R. § 3.50 (2004).

By the Commission.



Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission

Date: May 20, 2005